

**United States Department of the Interior
Bureau of Land Management**

**DECISION RECORD
WY-060-EA13-147**

August 2014

**West Antelope II South Lease Modification
WYW-177903**

High Plains District Office
2987 Prospector Drive
Casper, Wyoming 82604
(307) 261-7600
(307) 261-7587



Summary

The Antelope Mine complex, located in the Powder River Basin approximately 20 miles south/southeast of Wright, Wyoming is operated by Antelope Coal, LLC (AC), a subsidiary of Cloud Peak Energy and consists of surface coal mining methods together with ongoing reclamation operations. Federal coal lease WYW-177903 was originally issued to AC on September 1, 2011. AC filed an application on November 29, 2012 to modify WYW-177903 to include 856.61 acres of unleased contiguous federal coal lands situated within Township 40 North, Range 71 West, 6th Prime Meridian, Converse County, WY.

This lease modification would not displace other competitive commercial interests in the lands or deposits; would not include coal deposits that can be developed as a part of another potential or existing mining operation; and would be in the interest of the United States. This lease modification would not exceed the modified acreage limitation of 960 acres as set forth with the passage of the Energy Policy Act of 2005.

Decision

Based on the analysis conducted in Environmental Assessment DOI-BLM-WY-060-EA13-147 and the attendant Finding of No Significant Impact (FONSI), the West Antelope II Final Environmental Impact Statement (FEIS) and supporting documents in the case file, and on the recommendation of the Assistant District Manager for Solid Minerals, it is my decision to approve the lease modification to WYW-177903 to include tracts of unleased federal coal located within Township 40 North, Range 71 West.

Compliance with applicable laws, regulations and policies:

The proposed action and alternatives were evaluated under the following authorities: Mineral Leasing Act of 1920 as amended; Multiple-Use Sustained Yield Act of 1960; National Environmental Policy Act (NEPA) of 1969 as amended; Federal Coal Leasing Amendments Act of 1976; Federal Land Policy and Management Act of 1976; Surface Mining Control and Reclamation Act of 1977, and the Energy Policy Act of 2005. Under the conditions stipulated for lease WYW-177903, I find that this action will not result in significant impacts on the human environment pursuant to 40 C.F.R. 1508.27 (a) and (b) (1) through (10) and that an Environmental Impact Statement is not required. I further find this action is in conformance with the Record of Decision for the Resource Management Plan/Final Environmental Impact Statement for the Casper Field Office and that it will not cause unnecessary or undue degradation of the area.

BLM is aware of the recent District Court of Colorado order in a challenge to BLM's approval of the West Elk lease modification. In that decision, the District Court of Colorado found that BLM did not provide a rational explanation for including a social cost of carbon (SCC) analysis in the Draft EIS, but then removing that analysis from the Final EIS. In that decision, Judge Jackson acknowledged that federal agencies are not required to conduct a cost benefit analysis when preparing a NEPA document, nor are they required to quantify the cost of greenhouse gas (GHG) emissions.

The Council on Environmental Quality (CEQ) regulations at 40 CFR 1502.23, state (in part), “...for the purposes of complying with the Act, the weighing of the merits and drawbacks of various alternatives need not be displayed in a monetary cost-benefit analysis and should not be when there are important qualitative considerations.”

The SCC protocol was developed by the Office of Management and Budget using an interagency working group in response to Executive Order 12866, which requires federal agencies, to the extent permitted by law, “to assess both the costs and the benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs.” SCC estimates the monetary cost incurred by the emission of one additional metric ton of carbon dioxide (CO₂), and is not applicable to non-CO₂ GHG emissions, such as methane. Estimating SCC is challenging because it is intended to model effects on the welfare of future generations at a global scale caused by additional carbon emissions occurring in the present.

The West Antelope II South coal lease modification is not a regulatory action but rather a leasing action that allows an existing lessee the right to mine coal reserves that would otherwise be bypassed. It is BLM’s determination that in this particular instance calculating the SCC from CO₂ emissions from the combustion of the 16 million tons of coal mined in this modification would be negligible in relation to the impacts from coal burned on a nationwide or global basis. NEPA does not require a benefit-cost analysis, although CEQ NEPA regulations allow agencies to use it in NEPA analyses in certain circumstances (40 CFR § 1502.23). BLM’s analyses of plans and projects usually provide a regional economic impact analysis, which estimates the direct, indirect, and cumulative economic activity that a given action is expected to create within a specified geographic area. This activity is typically expressed as projected changes in employment, personal income, or economic output. In contrast, SCC provides one element of a benefit-cost analysis: the monetization of all meaningful economic benefits and costs. Monetizing only certain effects on social welfare can lead to an unbalanced assessment. Reporting the SCC in isolation would be misleading.

Consistent with the CEQ draft guidance, the BLM in the West Antelope II FEIS and the West Antelope II South Coal Lease Modification EA has used estimated GHG emissions associated with the proposed action as a reasonable proxy for the effects of climate change in its NEPA analysis. Specifically, the BLM analysis in the West Antelope II FEIS and the West Antelope II South Coal Lease Modification EA has provided quantitative estimates of the GHG emissions associated with the project and placed those emissions in the context of state, regional, and national emissions. In addition, the BLM has considered and disclosed the projected effects of climate change on the resources within the lease modification area. The BLM also has acknowledged that climate science does not allow a precise connection between project-specific GHG emissions and specific environmental effects of climate change. This approach is consistent with the approach that federal courts have upheld when considering NEPA challenges to BLM federal coal leasing decisions. *WildEarth Guardians v. Jewell*, 738 F.3d 298, 309 n.5 (D.C. Cir. 2013) *WildEarth Guardians v. BLM*, Civ. Case No. 1:11-cv-1481 (RJL) (D.D.C. filed Mar. 31, 2014).

Selected Alternative:

Specifically, the approval action consists of modifying lease number WYW-177903 to add approximately 856.61 acres containing about 15,751,000 tons of minable coal to the lease to avoid bypassing federal coal reserves.

FONSI:

I have determined that the proposed project is in conformance with the approved land use plan. I have reviewed this environmental assessment including the analysis of potentially significant environmental impacts. I have determined that the proposed action with the mitigation measures as identified in the EA will not have any significant impacts on the human environment and that an EIS is not required. It is my decision to implement the proposed action.

Public Involvement:

This project was internally scoped through the appropriate BLM specialists. Additional public involvement was provided for by posting a notice on the BLM NEPA register that BLM would be preparing an EA for this lease modification, posting the EA on BLM's website (http://www.blm.gov/wy/st/en/programs/energy/Coal_Resources/PRB_Coal/Docs.html) on March 21, 2014, and providing press releases to the Douglas, Gillette and Casper, Wyoming newspapers on March 21, 2014.

The EA was available for public comment from March 21, 2014 to April 4, 2014. The comments received were reviewed and given due consideration.

The level of scoping and public involvement was adequate as this area has been thoroughly scoped during preparation of the West Antelope II EIS and additionally reviewed during the Office of Surface Mining, Reclamation and Enforcement and Wyoming Department of Environmental Quality permitting process. In addition, the area under consideration has already been permitted by the applicant for coal mining-related disturbance.

Rationale for the Decision

I have reviewed the environmental assessment and the attendant FONSI (DOI-BLM-WY-060-EA13-147) for the West Antelope II South Lease Modification. I have determined that the proposed project is in conformance with the Record of Decision for the Resource Management Plan/Final Environmental Impact Statement for the Casper Field Office and that it will not cause unnecessary or undue degradation or have any significant adverse impacts on the human environment.

Appeal Procedures

This decision may be appealed to the Interior Board of Land Appeals, in accordance with the regulations in 43 C.F.R. Part 4. A person who wishes to appeal must file notice with the District Manager, Bureau of Land Management, Wyoming High Plains District, 2987 Prospector Drive, Casper, WY 82604 within 30 days of the publication of the decision. The Notice of Appeal must

identify the decision being appealed, and may include a statement of reasons for and any argument the appellant wishes to make. If the notice does not include any statement of reasons for the appeal, the appellant shall file such a statement with the Interior Board of Land Appeals, Office of Hearings and Appeals, 801 North Quincy Street, Arlington, Virginia 22203, within 30 days after the notice of appeal was filed. The appellant shall serve a copy of the Notice of Appeal and any statement of reasons, written arguments, or briefs on each adverse party named in the decision from which the appeal is taken and on the Regional Solicitor, Rocky Mountain Region, U.S. Department of the Interior, 755 Parfet Street, Suite 151, Lakewood, CO 80215 not later than 15 days after filing the document. Service of the copy may be made by delivering the copy personally or by sending it by registered or certified mail, return receipt requested.

If you wish to file a petition (pursuant to regulation 43 CFR 4.21) for a stay (suspension) of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your Notice of Appeal.

A petition for a stay is required to show sufficient justification based on the following standards:

- i. The relative harm to the parties if the stay is granted or denied;
- ii. The likelihood of appellant's success on the merits;
- iii. The likelihood of immediate and irreparable harm if the stay is not granted, and
- iv. Whether the public interest favors granting the stay.

The appellant requesting the stay bears the burden of proof to demonstrate that a stay should be granted. The appellant shall serve copies of the Notice of Appeal and petition for a stay on each party named in this decision from which the appeal is taken, and on the Appeals Board to which the appeal is taken.

Recommendation

I recommend that the modification to lease WYW-177903 by an addition of an 856.61 acre parcel.

/s/ Al Elser
Assistant District Manager for Solid Minerals
Wyoming High Plains District Office

August 15, 2014
Date

Approval

I agree with the recommendation of the Assistant District Manager for Solid Minerals, and I approve the decision to modify lease WYW-177903 by an addition of an 856.61-acre tract.

/s/ Stephanie Connolly
District Manager
Wyoming High Plains District Office

August 15, 2014
Date